IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMARY SUIT NO.1838 OF 2006

Cipla Ltd. ...Plaintiff.

Vs.

U and I System Design Limited. ...Defendant.

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Mr. Sanjay Udeshi i/b. Sanjay Udeshi and Co. for the Plaintiff.
None for the Defendant.

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CORAM :DR.D.Y.CHANDRACHUD, J.
11th June 2007.

P.C.:

The Plaintiff has placed an inter-corporate deposit in the amount of Rs.3 crores with the Defendant on 17th June 2003 which was to be refunded in four equal instalments each of Rs.75 lakhs between 12th October 2003 and 6th October 2004. The rate of interest stipulated was 14% per annum. In default, interest at the rate of 24% per annum was agreed upon. The Defendant accepted the deposit by its letter dated 18th June 2003 and issued a receipt as well as a Demand Promissory Note. The first instalment of Rs.75 lakhs was paid. Cheques issued by the Defendant in repayment of the balance amount were dishonoured. The Plaintiff has instituted the suit under

Order 37 of the Code of Civil Procedure, 1908 for the recovery of the amount together with interest.

The Defendant has been served with the writ of Summons and an affidavit of service has been filed. The Defendant has not entered appearance and has consequently not set up any defence on merits. Leave under clause 12 of the Letters Patent was granted to the Plaintiff on 19th June 2006. The suit is within limitation. The Plaintiff has tendered a compilation containing certified copies of the documents on which the claim in the suit is founded. The original documents have been filed before the 6th Court of the Metropolitan Magistrate at Mazgaon where acomplaint under Section 138 of the Negotiable Instruments Act, 1881 is pending. The Plaintiff has consequently led secondary evidence. The claim of the Plaintiff has been proved on the basis of the documents on record. In any event, the claim falls under the purview of Order 37 of the Code of Civil Procedure as it is based on a written contract. The Defendant having failed to entered appearance despite service of a writ of Summons, the Plaintiff will be entitled to a decree. The suit is accordingly

decreed as prayed, with the modification that the Plaintiff will be entitled to interest at the rate of 12% per annum on the principal sum of Rs. 2.25 crores from the date of the suit, until payment or realisation.

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